



MONTANA DEPARTMENT OF CORRECTIONS ADMINISTRATIVE POLICY

Policy No.: DOC 1.3.12	Subject: STAFF CONDUCT WITH OFFENDERS
Chapter 1: ADMINISTRATION AND MANAGEMENT	Page 1 of 6
Section 3: Personnel	Revision Date: Oct. 18, 2005
Signature: /s/ Bill Slaughter, Director	Effective Date: June 1, 1998

I. POLICY:

It is the policy of the Department of Corrections to ensure that all employees maintain the optimum level of professionalism and ethical standards toward any individual under the care, custody, or supervision of the Department.

II. APPLICABILITY:

All Department divisions, facilities and programs. This policy replaces *Employee Conduct with Offenders and Ex-Offenders*, and *Offender Abuse and Mistreatment*.

III. AUTHORITY:

2-2-104, MCA	<i>Rules of Conduct for Public Officers, Legislators, and Public Employees</i>
45-2-101, MCA	<i>General Definitions</i>
45-5-204, MCA	<i>Mistreating Prisoners</i>
45-5-501, MCA	<i>Definition</i>
45-5-502, MCA	<i>Sexual Assault</i>
45-5-503, MCA	<i>Sexual Intercourse without Consent</i>
4-4069, ACA	<i>Standards for Adult Correctional Institutions, 4th Edition</i>
3-4081, ACA	<i>2004 Standards Supplement</i>
DOC Policy 1.3.1	<i>Human Resources Policy and Personnel Manual</i>
DOC Policy 1.3.2	<i>Guidelines for Employee Performance and Conduct</i>
DOC Policy 1.3.13	<i>Staff Sexual Misconduct</i>
DOC Policy 1.3.14	<i>Misconduct Reporting Procedures</i>
DOC Policy 3.1.19	<i>Investigations</i>
DOC Policy 3.3.3	<i>Offender Grievance Procedures</i>
DOC Policy 3.4.1	<i>Adult Facility Discipline</i>
DOC Policy 4.1.2	<i>Offender Orientation</i>

IV. DEFINITIONS:

Offender – Any person committed to the care, custody, or supervision of the Department by any court, Board of Pardons and Parole, or through judicial sanction. This definition includes offenders assigned to programs such as probation, parole, Intensive Supervision (ISP), Conditional Release, Prerelease, alternatives to incarceration, work or educational release, or in any capacity where employees are supervising individual offenders.

Employee – For the purpose of this policy, paid employees or contracted persons, volunteers and interns who are paid or donate time or services to the Department, and individual service

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providers, e.g., delivery, maintenance, vendors, or other service providers who may not be contracted to the Department.

Contractor – Any person or corporation, other than an employee, providing a service to the Department (e.g., supervision, custody duties at treatment or prerelease centers, drug and mental health treatment, vocational and educational programs) for an agreed-upon form of compensation. Contractors may include local government agencies that contract with the Department or individuals who have contact with offenders under the supervision of the Department in a community setting.

Collateral Contact – Any person, other than an offender, with whom an employee of the agency may come in contact for official reasons concerning an offender under the care, custody, or supervision of the Department. Collateral contacts may include, but are not limited to: offenders' families, friends and associates; offenders' employers; treatment or medical providers; offenders' teachers, instructors, trainers, or supervisors; volunteer coordinators; attorneys; and judicial personnel.

Visitor – Any person having access to any Department or agency offices and workplaces for personal or official reasons.

Volunteer – Any person who, by mutual agreement with the Department or agency, provides service without compensation, or who voluntarily assists offenders or the agency in the course of volunteer duties.

Professional Relationship – For purpose of this policy, an employee relationship with offenders maintained through well-defined professional boundaries and the highest ethical standards of honesty, integrity, and impartiality pursuant to *DOC Policy 1.3.2, Att. A., Code of Ethics*.

Inappropriate Relationship – A non-professional, personal relationship with an offender, which includes any one or more of the acts listed under Section A., Prohibited Contact, as evidenced by conversation, correspondence, or other observable behavior.

Undue Familiarity – Any conversation, contact, personal or business dealing between an employee and an offender who is under the care, custody, or supervision of the Department that is unnecessary or not part of the employee's duties, and related to a personal relationship or purpose other than a legitimate correctional purpose. Undue familiarity includes, but is not limited to, acts of horseplay, betting, trading, dealing, socializing, family contact unrelated to the employee's duties, sharing or giving food, sharing or giving cigarettes, inappropriate personal conversation, exchanging personal correspondence, sexual misconduct, or in any other manner developing a relationship with an offender that is anything other than a professional relationship.

Abuse – Any unwarranted physical actions that result in bodily harm, or any other unwarranted physical acts that violate the human rights of facility or program offenders. Abuse also incorporates unwarranted acts that adversely affect the mental or emotional well-being of offenders including threats, harassment, cursing, and shouting.

Mistreatment – Pursuant to 45-5-204, *MCA*, means a person commits the criminal offense of mistreating prisoners if, being responsible for the care or custody of a prisoner, the person purposely or knowingly: 1) assaults or otherwise injures a prisoner; 2) intimidates, threatens,

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endangers, or withholds reasonable necessities from the prisoner with the purpose to obtain a confession from the prisoner or for any other purpose; or, 3) violates any civil right of a prisoner.

Sexual Intercourse without Consent and Sexual Assault – Pursuant to 45-2-101, 45-5-502, and 45-5-503, MCA, even though an offender may be a willing participant or even initiate sexual contact, sexual assault, or sexual intercourse, it is a crime for any person having supervisory or disciplinary authority over an offender to engage in sexual contact, sexual assault, or sexual intercourse with an offender (see *DOC Policy 1.3.14, Staff Sexual Misconduct*).

Retaliation – An act of revenge, either overt or covert, or threat of action taken against an offender or any other individual in response to that offender's or individual's complaint of sexual misconduct or cooperation in the reporting and investigation of alleged sexual misconduct. Forms of retaliation toward an offender may include, but are not limited to, unnecessary or excessive discipline, intimidation, unnecessary changes in work or program assignments, unjustified transfers to other institutions, unwarranted placement in protective custody, and unjustified denials of privileges or services.

Facility Administrator – The official, regardless of local title (administrator, warden, superintendent), ultimately responsible for the facility or program operation and management.

Designee – The position responsible for a specific action or program will also apply to that person's designee.

V. PROCEDURES:

A. Disclosure Requirement

Any employee who is related to or had a prior relationship with an offender admitted to his or her supervision or location of employment will report to the facility administrator, in writing, the nature, extent, and history of the relationship.

B. Required Conduct

Employees, as defined in this policy, will be governed by the following principles in their interactions with offenders:

1. Employees will maintain professional relationships with offenders at all times, protecting them from civil rights' violations.
2. Employees will provide services to offenders without regard to race, color, gender, national origin, or religious preference, and will not display favoritism toward, or discrimination against, any offender or group of offenders.
3. When encountering an offender in the community, e.g., in stores or restaurants, employees will maintain a professional relationship, without engaging in undue familiarity.
4. Employees will limit their relationships with offenders and offenders' families to officially authorized activities. They will conduct themselves in a manner to avoid conflict of interest or being placed in a situation that may compromise their professional

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integrity, compromise security, or cause embarrassment to the Department of Corrections and the State of Montana.

C. Prohibited Conduct

1. Employees will not engage in abusive behaviors toward or mistreatment of offenders as defined in Section IV of this policy.
2. Employees will not engage in inappropriate or prohibited relationships with offenders. The following are examples of behaviors that are prohibited between employees and offenders, including offender's family members or close associates:
 - using profane, indecent, ethnic, or other discriminatory language or references
 - displaying favoritism or preferential treatment of one offender, or group of offenders, over another
 - giving or receiving of gifts, favors, or services beyond those required by the Department
 - becoming personally involved with an offender to the extent that the employee's judgment or performance of duties is compromised
 - trading, selling or buying anything from an offender or an offender's family members, with the exception of staff purchases of approved offender hobby items.
 - entering into any type of business or fiduciary relationship

D. Alleged Staff Misconduct

Without exception, administrators will ensure that each Department division, facility or program will comply with the following Department policies and procedures for the reporting, referral, investigation, and disposition of alleged staff misconduct by any employee toward an offender.

1. Mandatory Reporting
 - a) any person subject to this policy must report all allegations of offender abuse or mistreatment between an employee and an offender in accordance with *DOC Policy 1.3.14, Misconduct Reporting Procedures*; and
2. Medical Referral
 - a) the division or facility administrator will ensure that alleged victims of abuse or mistreatment by an employee are immediately referred to a health care professional for a medical evaluation.
3. Mental Health Referral
 - a) the division or facility administrator will ensure that alleged victims of abuse or mistreatment by an employee are immediately referred to a mental health specialist for a mental health evaluation.
4. Investigation
 - a) all reports of alleged instances of offender abuse or mistreatment between an

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employee and an offender will be immediately investigated in accordance with *DOC Policy 3.1.19, Investigations*.

5. Disciplinary Action

- a) if investigation and due process procedures determine that an employee has committed abuse or mistreatment toward an offender, that employee will be subject to discipline up to, and including, termination, as outlined in *DOC Policy 1.3.1, Human Resources Policy and Personnel Manual*;
- b) employees who are terminated for abuse and mistreatment toward an offender will not be eligible for re-employment to any position within the Department of Corrections; and
- c) under Montana law, a person convicted of the offense of mistreating prisoners will be removed from office or employment and will be imprisoned in the state prison for a term not to exceed 10 years or be fined an amount not to exceed \$50,000, or both, in accordance with *45-5-204, MCA*.

E. Confidentiality

1. A misconduct complaint, including all information and documents pertinent to the complaint, will be handled with sensitivity and the appropriate level of confidentiality.
2. Information will only be revealed on a “need to know” basis or in defense of disciplinary or legal action.
3. Breaches of confidentiality may result in corrective or disciplinary action up to, and including, termination.

F. Records

1. Mandatory reporting or misconduct referral forms, the investigative file and any other documents pertaining to the misconduct complaint will be forwarded to the Department’s Human Resources Division.
2. The Department’s Human Resources Division will retain statistics with regard to the number and nature of misconduct incidents.
3. Based on information and research, the Department Director will ensure that appropriate policies, training, safety and security measures are taken to address accountability and prevention.

G. Retaliation

1. Department employees will not retaliate against the complainant, the victim, the accused, witnesses, or informants involved in the filing and investigation of misconduct allegations.
2. Retaliation in any form may result in corrective or disciplinary action up to, and including, termination.

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H. Facility and Program Procedures

1. All facility and program staff with responsibility for the care, custody, or supervision of offenders will:
 - a) notify offenders of their protection and responsibilities by ensuring them access and review of this policy in accordance with *DOC Policy 4.1.2, Offender Orientation*;
 - b) develop offender reporting procedures that allow them the opportunity to make a complaint verbally to any employee, or directly to the facility or program administrator, facility Human Resources Office or the Department's Human Resources Division, either verbally or in writing;
 - c) ensure offender access to the formal grievance process in accordance with *DOC Policy 3.3.3, Offender Grievance Procedures*, and access to the reporting procedures and form contained within *DOC Policy 1.3.14, Misconduct Reporting Procedures*;
 - c) ensure offender access to a secured "lock box" for offender to staff communication;
 - d) provide for the care and treatment of individuals who are alleged or substantiated victims of staff sexual misconduct in accordance with *DOC Policy 3.1.13, Staff Sexual Misconduct*; and
 - d) collect statistics on the number of reported incidents, and the number of substantiated incidents. The facility administrator will forward these to the Department's Human Resources Division, in writing, on a monthly basis.

I. Exceptions

1. After consultation with the Department's Human Resources Division, any exceptions to this policy must be approved by the division or facility administrator.

VI. CLOSING:

Questions concerning this policy should be directed to the Department's Human Resources Division.